

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

DENNIS MALIPURATHU,)	
)	
Plaintiff,)	
)	
)	CIV-11-646-W
v.)	
)	
RAYMOND JONES, et al.,)	
)	
Defendants.)	

SUPPLEMENTAL REPORT AND RECOMMENDATION

In this civil rights action filed by Plaintiff pursuant to 42 U.S.C. §1983, Plaintiff seeks monetary damages and equitable relief from thirteen Defendants. See Amended Complaint (Doc. #14). The matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. §636(b)(1)(B). Before the undersigned is Plaintiff's Motion Seeking Default Judgement Against Defendant Raymond Jones (Doc. #35)("Plaintiff's Motion") in which Plaintiff demands a default judgment be entered due to Defendant Jones' failure to timely respond to Plaintiff's Amended Complaint within 20 days. In Plaintiff's Motion Plaintiff provides no authority for his demand and instead argues the merits of his claims. However, it is assumed that Plaintiff is demanding that a default judgment be entered against Defendant Jones pursuant to Fed. R. Civ. P. 55(b).

The record shows that Defendant Jones was served with process on August 5, 2011, and that Defendant Jones timely filed his Answer to the Amended Complaint on August 25,

2011. (Docs. #21, 28). Rule 12, *Federal Rules of Civil Procedure*, provides that a defendant must serve an answer within 21 days after being served with the summons and complaint. Fed. R. Civ. P. 12(a)(1)(A)(i). Defendant Jones has responded to Plaintiff's Motion. In his responsive pleading Defendant Jones states that when he filed his Answer in this action his counsel mailed a copy of the Answer to Plaintiff at the address provided by Plaintiff in Boley, Oklahoma. However, when Plaintiff's Motion was filed Defendant Jones states that he became aware his Answer had not been delivered to Plaintiff and his counsel then mailed another copy of the Answer and Entry of Appearance to Plaintiff. Plaintiff has now filed a Response to Defendant Raymond Jones' Answer to Amended Complaint (Doc. #41). Because Defendant Jones timely filed his Answer to Plaintiff's Amended Complaint and Plaintiff has received a copy of Defendant Jones' Answer, there has been no default of the service requirements. Accordingly, Plaintiff's Motion should be denied.

RECOMMENDATION

Based on the foregoing findings, it is recommended that Plaintiff's Motion Seeking Default Judgement Against Defendant Raymond Jones (Doc. # 35) be DENIED. Plaintiff is advised of the right to file an objection to this Supplemental Report and Recommendation with the Clerk of this Court by October 12th, 2011, in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. The failure to timely object to this Supplemental Report and Recommendation would waive appellate review of the recommended ruling. Moore v. United States, 950 F.2d 656 (10th Cir. 1991); cf. Marshall v. Chater, 75 F.3d 1421, 1426 (10th Cir.

1996)(“Issues raised for the first time in objections to the magistrate judge’s recommendation are deemed waived.”).

This Supplemental Report and Recommendation does not dispose of the issues referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED this 22nd day of September, 2011.



GARY M. PURCELL
UNITED STATES MAGISTRATE JUDGE